

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

**REMARKS**

In the Office Action, the Examiner The Examiner noted that claims 12-33 and 44-46 are pending in the application, that claims 44-46 are withdrawn from consideration, and that claims 12-33 are rejected.

**Rejections Under 35 USC § 112, Second Paragraph**

Claims 28, 31, and 33 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicant considers the claims as being sufficiently clear. Nevertheless, Applicant has amended the claims.

With respect to claim 28, Applicant believes this claim was clear and met the requirements of 35 USC § 112, second paragraph. Specifically, the bundle version identifier is used, in at least one embodiment, to provide the ability to determine the current version of the data element and/or copy of the data element, as described in the specification. However, Applicants have amended claim 28 to include, for example, "wherein there is a plurality of versions of at least one of the bundles and wherein each of the plurality of versions is identified by a bundle version identifying signal." Applicant respectfully submits that this claim is clear and definite.

With respect to claim 31, Applicant believes this claim was clear and met the requirements of 35 USC § 112, second paragraph. However, Applicants have amended claim 31 to remove, for example, "peer-to-peer access to the data elements referenced in the bundles" and add "wherein the network node of the data owners and at least one of the network nodes of the accessors each stores the copies and wherein the network node of the data owners and at least one of the network nodes of the accessors each have access to the data elements referenced in the bundles." Applicant respectfully submits that this claim is clear and definite.

With respect to claim 33, Applicant believes this claim was clear and met the requirements of 35 USC § 112, second paragraph. Specifically, content blending is described in the specification as being used, in at least one embodiment, to create custom content collections based on bundle type, author, recipients, destination device or other criteria. The specification

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

refers to a variety of examples, including allowing users or user firms to blend additional content into a bundle at different points in the system, including the creator's firm aggregation server, the system's core infrastructure, and/or the recipient's firm aggregation server. User applications can also allow for blending at the sender's and/or the recipient's desktop. In another example, a buy-side firm does not want its portfolio managers wasting time on bundles tagged with equities that their analysts have a sell recommendation on. To help avoid such problems, they can program their aggregation server to display their internal analyst recommendation for every equity a bundle is tagged with. However, Applicants have amended claim 33 to include, for example, "blending additional content into at least one of the bundles." Applicant respectfully submits that this claim is clear and definite.

Applicants are not of the opinion that the amendments to the claims are narrowing amendments. Applicants respectfully submit that the claims satisfy the requirements under 35 U.S.C. § 112, second paragraph. Withdrawal of these rejections is respectfully requested.

**Rejection Under 35 U.S.C. § 103**

Claims 12-33 are rejected as obvious in view of, Bowman (U.S. Patent 6,601,234: Attribute dictionary in a business logic services environment) and Frey (U.S. Patent 6,029,168: Decentralized file mapping in a striped network file system in a distributed computing environment). Applicants respectfully disagree.

Bowman relates to a data access control method that involves calling a helper facade from application code to set or update attribute values for auditing or rollback purposes, when a user is authorized. A system and method are provided for controlling access to data of a business object via an attribute dictionary. **The attribute dictionary, which stores attribute names and values, is dispatched over a network.** The helper facade is provided for interfacing a business object and the attribute dictionary. The helper facade is called to set, get, or update one of the attribute values based on the corresponding attribute name, wherein the helper facade shields the attribute dictionary from the application code of the business object. The attribute value in the attribute dictionary is obtained or updated if the verification is successful, a dirty flag is set in the attribute dictionary, and an indicator is broadcast upon the attribute value being updated.

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

Frey relates to a decentralized access method of managing files in distributed computer system. Frey involves routing file block access request from one file access manager to the other, based on a specific determination result. Data files are distributed across a large scale data processing system to balance work loads and storage loads at a plurality of nodes. Specifically, Frey distributes meta-data in a plurality of file storage nodes to isolatively and distributively store file data in a distributed computing environment.

Claim 12 of the present invention is directed to a networked commercial interaction management method. It recites, for example, "assembling information into bundles," "distributing ... meta data and [a] data element reference," and "distributing copies of the data elements in the bundles ... following selection of the data elements." For at least the following reasons, Applicants respectfully assert that each of the limitations of claim 12 is not shown or suggested by any combination of Bowman and Frey.

**I. None of the Cited Prior Art Shows or Suggests Assembling  
a Data Element Reference AND Meta Data Describing the Data Element**

Though the Examiner does not explicitly state what element of Bowman he believes to correspond the "meta data" of claim 12, in the Examiner's rejection of claim 12 on page 3 of the Office Action, it appears the Examiner attempts to illustrate that meta data is bundled when he states that "each data stream 'includes an attribute descriptor defining elements of the data.'" The Examiner then simply states that the bundle of Bowman "consists of a data element reference and meta data describing the data" without giving any indication of what corresponds to the required "data element reference".

Applicants asserted in the previous reply that Bowman does not show or suggest bundling together a data element reference and a meta data describing the data element. In response the Examiner alleged that Bowman showed the contrary. However, Bowman clearly illustrates the Applicants contention that a reference is not being bundled in Bowman. As quoted by the Examiner on page 7 of the Office Action, Bowman states "it is best to bundle all the necessary data into a single data structure" and "the business object bundles all the data into a

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

data structure.” Bowman is clearly explaining here that the data itself is being bundled and not a “reference” to the data as required by claim 12.

The Examiner also references and discusses figure 105 of Bowman to demonstrate that each bundle comprises a “data element reference and meta data describing the data element.” However, like the other section of Bowman relied on by the Examiner, figure 105 supports the Applicants contention that the bundles of Bowman do not contain a reference to data and instead contain the data itself. The message of figure 105 includes “data between a sending system and receiving system.” It then describes that meta-data is attached “to the messages being sent between the sending system and the receiving system.” The figure describes parts of the meta-data such as a “first section identifying a type of object associated with the data,” “a number of attribute descriptors in the data,” and “a series of the attribute descriptors defining elements of the data.” However, these are merely parts of the meta-data and are in fact meta-data themselves and not a data reference. Associating data and meta data is not the same as associating a reference to data and meta data. The Examiner continues on page 7 and 8 of the Office Action by quoting sections of Bowman that define Bowman’s meta-data and continue to confirm that Bowman is related to “relaying data, data structures, and meta-data.” However, none these sections suggest in anyway a data element reference as required by claim 12.

Accordingly, Applicants respectfully request the withdrawal of the rejection of claim 12. Additionally, the Applicants respectfully request the withdrawal of the rejections of claims 13-33, each of which depend directly or indirectly from claim 12.

## **II. The “Distributing” Feature is Not Shown or Suggested by any Combination of the Prior Art**

Applicants note that the Examiner did not reply to the Applicant’s assertion that Frey is not involved in “distributing,” as claim 12 requires, but instead is merely involved in downloading data. However, the Examiner did state that, “Bowman is not being relied on for the distributing feature recited in the last paragraph of claim 12.” Instead “Frey is relied on for teaching using the meta data ... to distribute copies of the data to nodes of accessors.” However, as clearly noted, in the last paragraph of page 10 of the Amendment responsive to the Office

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

Action mailed November 16, 2005, Applicants asserted that Frey does not show or suggest, "distributing the meta data from the bundles through the network."

Applicants argue this because the distributing of Frey is in complete contrast to the distributing as claimed in claim 12. The following quote, from Frey, illustrates this difference.

Whenever a new file is created, an entry, consisting of its name together with the unique File ID 60 for that file, is placed, in sorted order, in a "well-known" distributed Directory file that was created when the distributed file system was initialized.

To access the file by name, first the name is found in the directory file and the File ID 60 is retrieved. (Frey, column 6, lines 53-58)

Here, Frey is describing that when a file is created "its name together with the unique File ID 60 for that file, is placed, in sorted order, in a "well-known" distributed Directory file." Then when a user wishes to access the file, the file name must be found and then a File ID retrieved. This does not show or suggest any of the features of claim 12 and in fact is incompatible and in contrast to the method of claim 12. Instead, as required by claim 12, "meta data and [a] data element reference" are distributed. Then, "following selection of the data elements ... using the meta data and the data element reference distributed through the network," copies are of the data elements are "distributed."

In summary, Frey is searching for a file in a list and then accessing the file. Frey access the list, looks for a file, and then pulls the file. While the claimed invention can, for example, distribute meta data (e.g. a file name) through the network and then when an accessor selects that meta data, the invention can distribute the data. The claimed invention can push information about a file, an accessor can select it, and then a copy can be distributed to the accessor.

Accordingly, Applicants respectfully request the withdrawal of the rejection of claim 12. Additionally, the Applicants respectfully request the withdrawal of the rejections of claims 13-33, each of which depend directly or indirectly from claim 12.

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

### **III. The Examiner Has Not Followed the Requirements of MPEP § 2144.03**

The Examiner states on page 10 of the Office Action that “the following references are cited” (emphasis added) in response to “the official notice [being] challenged.” However, the Examiner then cites only one reference, Fisher. The Examiner notes that Fisher is being cited in relation to claim 14. However, Regarding claims 29 and 30, the Examiner cites “col. 16 lines 17-20,” but provides no indication what reference is being referred to. Despite the lack of indication of prior art reference, the Applicants considered the possibility that the Examiner intended to cite Fisher here as well. However, col. 16 lines 17-20 of Fisher appear completely unrelated to claims 29 and 30. Additionally, the applicants reviewed the Examiner’s stated reasons for rejecting claims 29 and 30. These rejections, however, have not been altered from the previous Office Action and continue to cite only Official Notice. Therefore, it cannot be determined what reference the Examiner has relied on in the rejection of claims 29 and 30.

Accordingly, Applicants have not been “presented with the explicit basis on which the examiner regards the matter as subject to official notice” and have therefore not been “allowed to challenge the assertion” as required by the MPEP § 2144.03. Applicants point out that “[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as principal evidence upon which the rejection was based” (MPEP § 2144.03 E). Applicants thus respectfully request that the finality of the Office Action be withdrawn and an affidavit under 37 C.F.R. § 1.104(d)(2) detailing the reasons it is well known be provided, or a prior reference showing these features be provided. In the absence of either, Applicants request the Examiner to withdraw the rejections of claims 29 and 30.

### **IV. The Examiner Has not Made a Prima Facie Case of Obviousness for Claim 14**

Claim 14 recites, “negotiating a trusted relationship between owners and accessors to define the security information.” The Examiner had taken Official Notice regarding this claim and in response to the Applicants request to be presented with an explicit basis, the Examiner has provided Fisher. However, it is unclear if the examiner is relying on Fisher in a rejection under 35 USC §103 in combination with Bowman and Frey because the original rejection has not been

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

altered. Furthermore, the Examiner has provided no indication at all of a motivation to combine Fisher with Bowman and Frey. Applicants respectfully assert, that there is no motivation to combine Fisher with either Bowman or Frey and additionally, even if there were, the combined references would not teach each limitation of claim 14. Accordingly, Applicants respectfully request that the finality of the Office Action be withdrawn and the Applicants be provided with a motivation to combine. In the absences of either, Applicants request the Examiner to withdraw the rejection.

**V. Inherency is Misapplied Regarding Claims 13 and 15**

The Examiner states that the Applicants argument that inherency cannot be used in an obviousness rejection **directly conflicts** with MPEP Section 2112. The Examiner admits that the features of dependent claims 13 and 15 are in fact subject to an obviousness rejection. Specifically, inherency and obviousness are separate and unrelated concepts. As stated by the Court of Customs and Patent Appeals:

[The] inherency of an advantage and its obviousness are entirely different questions. That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.

*In re Spormann*, 363 F.2d 444, 150 USPQ 449, 452 (C.C.P.A. 1966). See also *MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305-06 (Fed. Cir. 1999) ("Inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. Artisans of ordinary skill may not recognize the inherent characteristics or functioning of the prior art.").

In addition, the Manual of Patent Examining Procedure **must follow** precedent established by the Federal Circuit and the Court of Customs and Patent Appeals (CCPA). As stated by the Board of Patent Appeals and Interferences:

Where the Court of Appeals for the Federal Circuit has addressed a point of law in a published opinion, **the Federal Circuit's decision is controlling. Similarly controlling are decisions considered to be binding precedent by the Federal Circuit, i.e., decisions of the former Court of Claims and the former Court of Customs and Patent Appeals, as well as the former Customs Court. See *South Corp. v. United***

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

*States*, 690 F.2d 1368, 215 USPQ 657 (Fed. Cir. 1982) (in banc); *Bar Zell Expeditors, Inc. v. United States*, 698 F.2d 1210, 1211 n. 4 (Fed. Cir. 1983).

*Ex parte Holt*, 19 USPQ2d 1211, 1214 (B.P.A.I. 1991). Similarly, CCPA decisions establish precedent for the Federal Circuit, and thereby precedent for the Board of Patent Appeals and Interferences:

The CCPA's later decisions control because that court always sat en banc. Accordingly, we conclude that no conflict currently exists.

*In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614, 1617 (Fed. Cir. 1989)

However, even if the Examiner could use inherency in this case, which the Applicants assert he cannot, the material which the Examiner alleges to be inherent would not show or suggest each of the elements of the rejected claims.

Claim 13 requires, for example, "wherein the step of distributing only distributes the bundle to the entitled accessors." This requirement is not shown or suggested and is not inherent in the section of Bowman cited by the Examiner nor anywhere else in Bowman. Applicants respectfully assert that the Examiner has confused distribution to anyone that decrypts the data package with the claimed feature of "each bundle includes security information identifying entitled accessors of the data, and wherein the step of distributing only distributes the bundle to the entitled accessors." That is, in the present invention, the data bundle is distributed only to the appropriate recipients/accessors, **rather than to both people having an encryption key and others not.**

Additionally, claim 15 requires, for example, "selecting networked users to receive bundles from, from a directory of authorized networked users before the steps of distributing." Clearly the Examiner has not explained how the cited section of Bowman inherently discloses any of these limitations of claim 15.

Accordingly, Applicants respectfully request the withdrawal of the rejections of claims 13 and 15.

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

**VI. There is No Motivation to Combine Bowman and Frey**

The Examiner states, on page 4 of the Office Action, that it

“would be obvious to modify Bowman 234 to associate each bundle with a node and to assemble same there at in order to effect a node associated bundle and to copy the data elements to a user computer using a selection process such as the directory in Frey, the motivation being the ability to make changes to the data resident at the user’s node and to allow access to information.”

Applicants respectfully disagree and assert that there is no motivation to combine Bowman and Frey to produce the claimed invention. When claim 12 is interpreted as a whole, the prior art does not show or suggest the combination of limitations in claim 12. For example, neither Bowman nor Frey discloses the claimed step of “assembling information into bundles, wherein each bundle comprises a data element reference and meta data describing the data element.” Therefore, no combination of Bowman and Frey could arrive produce claim 12.

Accordingly, Applicants respectfully request the withdrawal of the rejection of claim 12. Additionally, the Applicants respectfully request the withdrawal of the rejections of claims 13-33, each of which depend directly or indirectly from claim 12.

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT

### CONCLUSION

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, Applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples Applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, Applicants assert that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicants have emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, Applicants do not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, Applicants are providing examples of why the claims described above are distinguishable over the cited prior art.

Applicants wish to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, Applicants reserve the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely Applicants' best attempt at providing one or more definitions of what the Applicants believe to be suitable patent protection. In addition, the present claims provide the intended scope of protection that Applicants are seeking for this application. Therefore, no estoppel should be presumed, and Applicants' claims are intended to include a scope of protection under the Doctrine of Equivalents.

Docket No.: 26119.136E-USI  
Serial No. 09/697,024

PATENT

Further, Applicants hereby retract any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, Applicants specifically retract statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, Applicants respectfully submit that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, Applicants respectfully submit that the Application is in condition for allowance, and that such action is earnestly solicited.

Docket No.: 26119.136E-US1  
Serial No. 09/697,024

PATENT


AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

Wilmer Cutler Pickering Hale and Dorr LLP

  
Irah H. Donner  
Registration No. 35,120

399 Park Avenue  
New York, NY 10022  
TEL (212) 230-8887  
FAX (212) 230-8888

Date: 10/16/06